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Tasja Sdn Bhd v Kementerian Kesihatan Malaysia

B HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-24C(ARB)-19–07 OF 2016
DARRYL GOON JC
27 APRIL 2018

C *Arbitration — Award — Question of law — Dispute arose between plaintiff and defendant — Dispute referred to arbitration — Arbitrator refused pre-award interest claimed by plaintiff — Plaintiff filed application under s 42(1) of the Arbitration Act 2005 — Plaintiff sought to refer questions of law arose from arbitration award — Whether arbitrator had power to grant pre-award interest — Whether court bound by decision of Federal Court in Far East Holdings Bhd & Anor v Majlis Ugama Islam dan Adat Resam Melayu Pahang and other appeals [2018] 1 MLJ 1 — Arbitration Act 2005 s 42(1)*

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E The defendant appointed the plaintiff to complete a project on the 'Tapak Hospital Sultanah Aminah, Johor Bahru, Johor Darul Takzim'. A dispute arose between the parties which led to a reference made to the arbitration. After the full hearing, the arbitrator found in favor of the plaintiff, nevertheless, the arbitrator refused pre-award interest as claimed by the plaintiff ('arbitration award'). The arbitrator's decision was premised on the decision of the Federal Court in *Far East Holdings Bhd & Anor v Majlis Ugama Islam dan Adat Resam Melayu Pahang and other appeals* [2018] 1 MLJ 1 ('Far East Holdings'). Dissatisfied with the decision, the plaintiff filed the present application under s 42(1) of the Arbitration Act 2005. The plaintiff sought to refer several questions of law which arose from the arbitration award. The said questions of law were centered on pre-award interest and the decision of the Federal Court in *Far East Holdings*.

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Held, dismissing the plaintiff's application with costs of RM10,000:

H (1) The ratio decidendi of the Federal Court's decision in *Far East Holdings* made it clear that unless otherwise provided by the arbitration agreement, an arbitrator did not have the power to grant pre-award interest. By virtue of the doctrine of stare decisis, the court was bound by the decision of the Federal Court (see para 31).

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[Bahasa Malaysia summary

Defendan telah melantik plaintif untuk menyiapkan projek pada 'Tapak Hospital Sultanah Aminah, Johor Bahru, Johor Darul Takzim'. Pertikaian timbul antara pihak-pihak yang membawa kepada rujukan yang dibuat kepada

timbang tara. Selepas perbicaraan penuh, penimbang tara didapati memihak kepada plaintif, bagaimanapun, penimbang tara itu menolak faedah pra-award seperti yang didakwa oleh plaintif ('anugerah timbang tara'). Keputusan penimbang tara adalah berdasarkan keputusan Mahkamah Persekutuan dalam kes *Far East Holdings Bhd & Anor v Majlis Ugama Islam dan Adat Resam Melayu Pahang and other appeals* [2018] 1 MLJ 1 ('Far East Holdings'). Tidak puas hati dengan keputusan itu, plaintif memfailkan permohonan ini di bawah s 42(1) Akta Timbang Tara 2005. Plaintif memohon untuk merujuk beberapa persoalan undang-undang yang timbul daripada award timbang tara itu. Persoalan undang-undang tersebut berkisarkan pada faedah pra-award dan keputusan Mahkamah Persekutuan dalam kes *Far East Holdings*.

Diputuskan, menolak permohonan plaintif dengan kos RM10,000:

(1) Ratio decidendi dalam keputusan Mahkamah Persekutuan dalam kes *Far East Holdings* adalah jelas bahawa melainkan jika diperuntukkan selainnya oleh perjanjian timbang tara, penimbang tara tidak mempunyai kuasa untuk memberikan faedah pra-award. Menurut doktrin stare decisis, mahkamah terikat dengan keputusan Mahkamah Persekutuan (lihat perenggan 31).]

Notes

For cases on question of law, see 1(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 1967–1972.

Cases referred to

Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd [1994] 2 SLR 735, HC (refd)

Chandris v Isbrandtsen Moller Co Inc [1950] 2 All ER 618 (distd)

Edwards and Another, Assignees of Richard Parker, a Bankrupt, v The Great Western Railway Company (1851) 138 ER 603; (1851) 1 CB 588 (refd)

Executive Engineer, Dhenkanal Minor Irrigation Division v NC Budharaj (Deceased) [2001] 2 SCC 721, SC (refd)

Far East Holdings Bhd & Anor v Majlis Ugama Islam dan Adat Resam Melayu Pahang and other appeals [2018] 1 MLJ 1 (folld)

Government Insurance Office of NSW v Atkinson-Leighton Joint Venture [1981] 146 CLR 206 (refd)

IBM Australia Ltd v National Distribution Services Ltd [1991] 100 ALR 361 (refd)

Kerajaan Malaysia v Tasja Sdn Bhd [2016] MLJU 371; [2016] 6 CLJ 738 (refd)

Leong Kum Whay v QBE Insurance (M) Sdn Bhd & Ors [2006] 1 MLJ 710 (refd)

Lian Hup Manufacturing Co Sdn Bhd v Unitata Bhd [1994] 2 MLJ 51 (refd)

Naamlooze Vennootschap Handels-en-Transport Maatschappij 'Vulcaan' v A/S J

Ludwig Mowinckels Rederi [1938] 2 All ER 152 (refd)
Podar Trading Co Ltd; Bombay v Francois Tagher, Barcelona [1949] 2 All ER 62 (refd)
President of India v La Pintada Compania Navigacion SA [1985] 1 AC 104 (refd)
Ramdutt Ramkissen Das v ED Sassoon & Co [1929] All ER Rep 225; (1929) ILR 56 (refd)
Secretary Irrigation Department, Government of Orissa and others v GC Roy [1992] AIR 732, SC (refd)
Shamelin Holdings Sdn Bhd v Mohd Anhar bin Ahmad (trading as ABA Architect) [2006] 6 MLJ 135; [2006] 8 CLJ 622 (refd)

Legislation referred to

Arbitration Act 1952 (repealed by Arbitration Act 2005) s 21
Arbitration Act 2005 ss 30(1), 33(6), 38(1), 42(1)
Civil Law Act 1956 ss 2, 11
Law Reform (Miscellaneous Provisions) Act 1934 [UK] s 3

Chin Yu Yen (Mah-Kamariyah & Philip Koh) for the plaintiff.
Nadiah Hanim Tajuddin (Shamsurryaty Samsudin with her) (Attorney General's Chambers) for the defendant.

Darryl Goon JC:

[1] This is an application by the plaintiff under s 42(1) of the Arbitration Act 2005. By this application the plaintiff seeks to refer several questions of law for the determination of the court. These questions of law are said to arise from an arbitration award. They are set out in the originating summons:

1. Sama ada bawah undang-undang am Malaysia, kuasa dan bidang kuasa Penimbangtara untuk membenarkan pre-award interest adalah berasa/daripada pengemukaan pihak-pihak atau 'parties' submission' yang memberikan kuasa tersirat kepada Penimbangtara untuk membenarkan pre-award interest?

2. Sama ada kuasa dan bidang kuasa Penimbangtara untuk membenarkan pre-award interest bawah undang- undang am telah disekatkan danlatau dihadkan oleh Akta Timbangtara 2005, terutamanya oleh Seksyen 33(6) tersebut?

3. Sama ada keputusan Mahkamah Rayuan dalam *Far East Holdings Bhd v Majlis Ugama Islam Dan Adat Resam Melayu Pahang* [2015] 4 MLJ 766 ('*Far East Holding* kes') mengenai pre-award interest bawah seksyen 33(6) Akta Timbangtara 2005 adalah obiter dicta dan tidak mengikat Penimbangtara?

1. Whether under the general law in Malaysia, the power and jurisdiction of the Arbitrator to award pre-award interest is derived from the parties' submission which clothed the Arbitrator the implied powers to award such pre-award interest?

2. Whether the power and jurisdiction of the Arbitrator to award pre-award interest under the general law is curtailed and/or restricted by the Arbitration Act 2005, in particular s 33(6) thereof?

3. Whether the decision of the Court of Appeal in *Far East Holdings Bhd v Majlis Ugama Islam Dan Adat Resam Melayu Pahang* [2015] 4 MLJ 766 ('*Far East Holding* case') concerning pre-award interest under s 33(6) of the Arbitration Act 2005 is obiter dicta and not binding upon the Arbitrator?

Thus the issues of law are centered on pre-award interest and the decision of the Federal Court in *Far East Holdings Bhd & Anor v Majlis Ugama Islam dan Adat Resam Melayu Pahang and other appeals* [2018] 1 MLJ 1.

BACKGROUND

[2] By a written contract dated 11 January 2005 the defendant appointed the plaintiff to complete a project described as 'Cadangan Pengubahsuaian Sebahagian Bangunan Utama Kepada Unit Kecemasan dan Kemalangan Di Tingkat Bawah dan Kepada Unit Wad High Dependency, Unit Rawatan Rapi, Unit CSSD dan Bilik-Bilik Pembedahan Jantung di Tingkat Satu Dan Cadangan Pembinaan dan Penyiapan 1 Blok 2 Tingkat Kafetaria/Balai Pelawat, Sebahagian Laluan Bertutup, Tangga-tangga Kecemasan Di Blok Utama Sedia Ada Dan Kerja-Kerja Berkaitan Di Atas Tapak Hospital Sultanah Aminah, Johor Bahru, Johor Darul Takzim'.

[3] The project could not be completed on time. Consequently, extensions of time were required. There were two such extensions of time. They added some 914 days to the original completion date of the contract.

[4] A dispute then arose between the parties. The dispute concerned the expenses incurred by the plaintiff during the period of extended time. The dispute was then referred to arbitration. After a full hearing, the learned arbitrator made an award in the plaintiff's favour. The final amended award was as follows:

> [1.0.] The respondent shall within sixty [60] days after that when either party shall have taken up this award, pay to the Claimant:
>
> > [1.1]. the sum of Ringgit Malaysia Two Million Nine hundred seventy seven thousand, four hundred and seventeen and cents six only (RM2,997,417.06) (hereinafter the 'Award Sum');

A [1.2]. interest at the rate of five percentum per annum (5.00%) on the Award Sum from the date of the award until sooner payment and or settlement;

[1.3]. agreed costs of Ringgit Malaysia Thirty Five Thousand only (RM35,000.00)

B [2.0]. The Respondent shall pay the Claimant recoverable arbitration costs, including but not limited to the costs of the venue and all reasonable disbursements and or out of pocket expenses incurred by the Claimant for the sole purpose of this arbitration proceeding; and to the extent that the Claimant has paid any part thereof the Respondent shall forthwith reimburse the Claimant with such amount or amounts; and

C [3.0]. The Respondent shall also pay and bear my fees and expenses in respect of this arbitration proceedings including but not limited to this my Final Award, and to the extent that the Claimant has paid any part thereof the Respondent shall forthwith reimburse the Claimant with such amount or amounts.

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[5] In the arbitration, the plaintiff specifically included a claim for an award of interest of 8% on the principle sum claimed of RM3,035,831.26 from 8 November 2011 to date of full realisation. Thus, interest is claimed from a period *before* the award to full realisation ie after the award.

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[6] The issue that concerns this case is the interest claimed for the period before the award. Such a claim is now commonly referred to as 'pre-award interest. I shall use that term to describe the interest claimed by the plaintiff that is in issue in this originating summons.

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[7] As can be seen from the award, although the plaintiff succeeded in its claim for a sum of RM2,977,417.06, the learned arbitrator declined to award the plaintiff any pre-award interest claimed. The arbitrator only awarded interest from the date of the award until sooner payment or settlement of the sum awarded. This application is therefore centred on the learned arbitrator's refusal to grant the pre-award interest claimed by the plaintiff.

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[8] The reasons given by the learned arbitrator for refusing pre-award interest are as follows:

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663. Having perused the submissions by both parties, it is clear to me that:-

a. there is no ambiguity in section 33(6) as to the extent of an arbitral tribunal's powers to award interest It explicitly says that an arbitral tribunal may award interest from the date of award to the date of realization, and, by remaining silent on pre-award interest, implicitly deprives an arbitral tribunal of the power to grant the same;

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b. the decision in Far East Holdings Sdn Bhd is, until such time it is overruled, binding upon this Tribunal;

THE CONTENTIONS

[9] The plaintiff's first line of attack is that the ratio decidendi of the Federal Court in *Far East Holdings*, is relatively narrow. It is limited to cases where the claim for pre-award interest was not pleaded. The plaintiff points out that in this case however, unlike in *Far East Holdings*, there was a specific claim for pre-award interest pleaded and placed before the learned arbitrator.

[10] The second line of the plaintiff's attack is the contention that an arbitrator derives his jurisdiction not from the Arbitration Act 2005 but from the submission by the parties to arbitrate the dispute. From this submission, the plaintiff contends, arises an implied authority conferred upon an arbitrator to grant pre-award interest in conformity with the provisions in s 11 of the Civil Law Act 1956. This authority to grant pre-award interest is to prevail unless specifically prohibited by the arbitration agreement, and presumably, by any legislation.

[11] The plaintiff therefore contends that the Arbitration Act 2005 is not the source of an arbitral tribunal's jurisdiction to award pre-award interest. It matters not if the Arbitration Act 2005 is silent on pre-award interest so long as it does not prohibit it.

[12] In mounting this argument, the plaintiff points out that both s 21 of the repealed Arbitration Act 1952 and s 33(6) of the Arbitration Act 2005 do not prohibit the grant of pre-award interest.

[13] The plaintiff also points to ss 30(1) and 38(1) of the Arbitration Act 2005 which makes reference to the applicability of Malaysian law unless otherwise agree. In this context, the plaintiff then refers to s 11 of the Civil Law Act 1956 which provides discretionary powers for the award of interest on debts and damages for the period when the cause of action arose and the date of a judgment.

[14] The plaintiff then refers to several judicial decisions from various Commonwealth countries. It is argued that in these Commonwealth jurisdictions, even though there exists no express power conferred on arbitrators to do so, the courts have nevertheless held that arbitrators have the power to grant pre-award interest. It is said that these decisions have been followed in Malaysia. It is submitted that the basis of these decision is that the jurisdiction of an arbitrator to award interest is to be implied from the parties' submission to arbitration and must be in conformity with that afforded to the courts under provisions that are similar to s 11 of the Civil Law Act 1956. Learned counsel for the plaintiff submits that these decisions were not cited in *Far East Holdings*.

[15] The respondent on the other hand maintains that this issue on pre-award interest is now settled beyond contestation by the Federal Court in *Far East Holding*. More importantly, the respondent points out that that decision is binding on this court.

THE RATIO DECIDENDI IN *FAR EAST HOLDINGS*

[16] There were three related appeals considered by the Federal Court in *Far East Holdings*. Civil Appeal 02–21–04 of 2016 was one of them and the questions of law posed for that appeal were the following which were set out in the judgment of the Federal Court:

> Civil Appeal 02–21–04 of 2016
>
> (a) whether under or in proceedings under the Arbitration Act 2005, the arbitrator has the jurisdiction to award pre-award interest?
>
> (b) whether the arbitrator has the jurisdiction to award pre-award and post-award interests when it is not specifically pleaded?
>
> (c) whether the arbitrator has the power to award pre-award and post-award interests under the general relief, 'all further and/or incidental relief which are appropriate under the circumstances of the present case to be awarded to the claimant'? and
>
> (d) whether the court can interfere with the discretionary power of the arbitrator to award pre-award and post-award interests?

[17] To these questions posed, the Federal Court held that:

> [187] Unless otherwise provided in the arbitration agreement, an arbitrator could only award post-award interest. The AA 2005 does not contemplate the award of pre-award interest, unless so provided in the arbitration agreement. There was no indication that pre-award interest was provided in the arbitration agreement. Pre-award interest could not be awarded. Post-award interest may be granted. But since post-award interest was not pleaded, it would not seem fair that the discretion to award interest should be exercised in favour of post-award interest.

[18] I am of the view that the first sentence in the Federal Court's judgment is clear beyond dispute. It states in crystalline terms that, 'unless otherwise provided in the arbitration agreement, an arbitrator could only award post-award interest'. It would follow from the judgment that if an arbitrator may only award post-award interest any attempt to do so, in the absence of any authorisation in the arbitration agreement, would be without jurisdiction on the part of the arbitrator.

[19] The decision of the Federal Court in *Far East Holdings* was not expressed to be conditional upon whether a claim for pre-award interest was pleaded or made in the arbitration proceedings. There is also no reason to so

imply merely because post-award interest was not granted. The Federal Court held that post award interest may be granted by an arbitrator but declined to do so in that case because it was not pleaded, and therefore not claimed, in the arbitration.

[20] By operation of the doctrine of stare decisis, this court is bound by the decision of the Federal Court on the issue of law as to whether an arbitrator may grant pre-award interest, in the absence of any provision in the arbitration agreement permitting the arbitrator to do so.

THE COMMONWEALTH AND MALAYSIAN CASES PRIOR TO *FAR EAST HOLDINGS*

[21] The plaintiff's arguments are in fact similar to those the plaintiff advanced in a prior case in which the plaintiff was a party namely, *Kerajaan Malaysia v Tasja Sdn Bhd* [2016] MLJU 371; [2016] 6 CLJ 738. In that case the learned judge carefully set out in full the arguments of the plaintiff and the authorities relied on.

[22] Many of the authorities from the United Kingdom, Australia, India and in Malaysia, relied upon by the plaintiff are traceable, directly or indirectly, to the decision of the English Court of Appeal in *Chandris v Isbrandtsen Moller Co Inc* [1950] 2 All ER 618: see *President of India v La Pintada Compania Navigacion SA* [1985] 1 AC 104 at p 119; *Government Insurance Office of NSW v Atkinson-Leighton Joint Venture* [1981] 146 CLR 206 at p 234; *IBM Australia Ltd v National Distribution Services Ltd* [1991] 100 ALR 361 at p 375; *Secretary Irrigation Department, Government of Orissa and others v GC Roy* [1992] AIR 732 at pp 739 and 749; *Lian Hup Manufacturing Co Sdn Bhd v Unitata Bhd* [1994] 2 MLJ 51 at p 54; *Leong Kum Whay v QBE Insurance (M) Sdn Bhd & Ors* [2006] 1 MLJ 710 at p 724 and *Shamelin Holdings Sdn Bhd v Mohd Anhar bin Ahmad (trading as ABA Architect)* [2006] 6 MLJ 135 at p 140; [2006] 8 CLJ 622 at p 627 and *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd* [1994] 2 SLR 735.

[23] The English Court of Appeal in *Chandris v Isbrandtsen Moller Co Inc* [1950] 2 All ER 618 was concerned only with the issue of interest generally. In Tucker LJ's words at p 619:

> We are only concerned with one aspect of the case — the question whether or not interest can be awarded by the arbitrator on the amount awarded for demurrage.

In *Chandris*, Tucker LJ stated that:

> I think, however, that the real basis of *Edwards v Great Western Ry Co* (2) was that the arbitrator derived his powers, not from the Act of 1833, but from the submission to him which necessarily gave him the 'implied powers' referred to in the

language of LORD SALVESEN which I have just quoted, and I see no reason why, since the Act of 1934, an arbitrator should not be deemed impliedly to have the same powers. Therefore, with diffidence, having regard to the view expressed by the Divisional Courton this matter, I have come to the conclusion that in such a case as the present the arbitrator has power to award interest, and, accordingly, to that extent, I think this appeal should succeed and the *Podar* case (1) be overruled.

[24] In interpreting the decision of the court in *Edwards and Another, Assignees of Richard Parker, a Bankrupt, v The Great Western Railway Company* (1851) 138 ER 603; (1851) 1 CB 588, Tucker LJ at p 623 had resorted to the observations of Lord Salvesen in *Ramdutt Ramkissen Das v ED Sassoon & Co* [1929] All ER Rep 225; (1929) ILR 56, which was quoted with approval by Lord Maugam in *Naamlooze Vennootschap Handels-en-Transport Maatschappij 'Vulcaan' v A/S J Ludwig Mowinckels Rederi* [1938] 2 All ER 152, and stated that:

> An award of interest is only a part of the damages recoverable, and, adapting to the facts of this case the language of LORD SALVESEN in the case to which I have just referred — language which was approved by LORD MAUGHAM — it would read as follows: Although the Law Reform (Miscellaneous Provisions) Act, 1934, does not in terms apply to arbitrations, I think that in mercantile references of the kind in question it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of the contract, and that every right and discretionary remedy given to a court of law can be exercised by him.

[25] The relevant provision of the Law Reform (Miscellaneous Provisions) Act 1934 that was referred to by the court in *Chandris* was s 3 which provides as follows:

> (1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment ... (2) Sections 28 and 29 of the Civil Procedure Act, 1833, shall cease to have effect.

[26] Section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 of UK is materially the same with s 11 of the Civil Law Act 1956. For completeness, s 11 is set out below:

> 11 In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment:
>
> Provided that nothing in this section —
>
> (a) shall authorize the giving of interest upon interest;

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange.

[27] Thus, if *Chandris* were to be followed it would mean that by reason of the parties' submission to arbitration, an arbitrator would be clad with an implied authority to award pre-arbitration interest similar to the powers under s 11 of the Civil Law Act 1956. This would be on the basis, as Tucker LJ stated, that it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of the contract, and that every right and discretionary remedy given to a court of law can be exercised by the arbitrator.

[28] Quite apart from the fact that the decision in *Far East Holdings* binds me, I am not entirely persuaded by the applicability of the views expressed in *Chandris*. The proper law of the contract in this case is Malaysian Law. This was agreed to by the parties before the learned arbitrator and recorded in the learned arbitrator's amended final award. Under Malaysian law however, the discretionary power to award interest under s 11 of the Civil Law Act 1956 is expressly conferred only on the courts. The term 'Court' is specifically defined under s 2 of the Civil Law Act 1956 to mean 'any court in Malaysia of competent jurisdiction, and includes any Judge thereof whether sitting in court or in chambers;'. It surely cannot be that the parties, by virtue of their submission to arbitration, may alter specific aspects of Malaysian law so as to extend its scope beyond what parliament had expressly provided. There is no juridical basis for any such extension and none is provided.

[29] In addition, the implication that is said to confer this power on arbitrators is said to arise from the submission to arbitration. With respect, I would suggest that begs the question. A submission to arbitration confers jurisdiction on the arbitrator to hear and decide the dispute between the parties according to the law agreed upon by the parties. However, whether the arbitrator has the power to grant a specific order sought, or to order pre-award interest, is an issue of a very different nature. It would turn on the whether the law of the contract affords the arbitrator the power he needs to grant the order sought.

[30] These views express may be regarded as being 'too stale and technical to be countenanced' (see *Executive Engineer, Dhenkanal Minor Irrigation Division v NC Budharaj (Deceased)* [2001] 2 SCC 721 at p 744) but this is similar to the basis of Lord Goddard CJ's decision at the Divisional Court in *Podar Trading Co Ltd; Bombay v Francois Tagher, Barcelona* [1949] 2 All ER 62. In that case Lord Goddard states at p 67:

The Law Reform (Miscellaneous Provisions) Act, 1934, was passed on July 25, 1934, and the Arbitration Act, 1934, was then already law, having been passed on May 17 of that year. The only reference to interest in the latter Act is in s 11 which provides that:

> A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

In the Law Reform Act it is provided by s 3 that:

> (1) In any proceedings tried in any court of record for the record for the recovery of any debt or damages, the court may, if it thinks fit, [award] interest ... on the whole or any part of the debt or damages for the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

By sub-s (2) of that section the provisions of the Civil Procedure Act, 1833, which deal with interest, namely, ss 28 and 29, are repealed. So, although in the Arbitration Act, 1934, a provision is made for interest but only on the amount of the award from the date of the award, s 3 of the Law Reform Act gives no power to an arbitrator to give interest either on debt or damages. Moreover, as ss 28 and 29 of the Civil Procedure Act are repealed, we feel driven to hold that not only have arbitrators no power to give interest on damages, but they have been deprived of the powers which they had so long as the sections of the Civil Procedure Act were in force and can now only give it in circumstances in which it was recoverable at common law. It may well be that this was over-looked when the Act was passed, but, if it was a casus omissus or if the power was taken away per incuriam, it must be put right by the legislature. No doubt, the association could amend their rules and provide that interest could be awarded. Then those persons who have made contracts which are subject to the rules and regulations of the association would be bound by an award which gave interest because as a matter of contract they would have agreed to pay if the award was against them. We feel obliged to hold in this case that there was no power to award interest as there is no provision in the rules for it.

CONCLUSION

[31] The ratio decidendi of the Federal Court's decision in *Far East Holdings* makes it clear that unless otherwise provided by the arbitration agreement, an arbitrator does not have the power to grant pre-award interest. By virtue of the doctrine of stare decisis, this court is bound by the decision of the Federal Court. There plaintiff's application in this originating summons is therefore dismissed with costs.

[32] On the issue of costs, during submissions, learned counsel for the parties had agreed that which ever way the court decides this application, a sum of RM10,000 would be appropriate. I am in agreement. I therefore order costs against the plaintiff fixed at a sum of RM10,000.

Plaintiff's application dismissed with costs of RM10,000.

Reported by Dzulqarnain Ab Fatar